



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

PIEDMONT REGIONAL OFFICE

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Robert G. Burnley
Director

Gerard Seeley, Jr.
Piedmont Regional Director

WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO Simons Hauling, Co., Inc. Permit No. 524

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Waste Management Board and Simons Hauling, Co., Inc. for the purpose of addressing certain violations of the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.

6. "Simons Hauling" means Simons Hauling, Co., Inc., a corporation certified to do business in Virginia and its affiliates, subsidiaries, and parents.
7. "Facility" means the Simons Hauling Construction/Demolition/Debris Landfill which operated under Permit No. 524, located off of Darbytown Road in Henrico County, Virginia.
8. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. "VSWMR" means the Virginia Solid Waste Management Regulations 9 VAC 20-80-10 *et seq.*

SECTION C: Findings of Fact

1. Simons Hauling owns and operates a construction/demolition/debris (CDD) landfill in Henrico County, Virginia.
2. On September 13, 2004, DEQ conducted an inspection of Simons Hauling. The following violations were noted during the inspection:
 - Landfill leachate had entered state waters from the sediment basin.
 - A slope failure on a closed portion of the landfill resulted in the discharge of leachate.
3. On October 20, 2004, a Notice of Violation (NOV) No. 2004-10-PRO-602 was issued for the above violations.
4. On November 1, 2004, the Department received a letter from Simons Haulings describing the events and actions taken leading to the above NOV.
5. On November 30, 2004, the Facility was re-inspected and it was determined that substantial progress had been made to address the items cited in the NOV.
6. On March 16, 2004, the Department met with Simons Hauling to discuss the Notice of Violation and the draft Consent Order.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted in Va. Code § 10.1-1455 orders Simons Hauling and Simons Hauling voluntarily agrees to pay a civil charge of \$5,300 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia," deliverable to:

within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia," deliverable to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Simons Hauling, for good cause shown by Simons Hauling, or on its own motion after notice and opportunity to be heard.
2. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Simons Hauling admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Simons Hauling consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Simons Hauling declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Simons Hauling to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Simons Hauling shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Simons Hauling shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Simons Hauling shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Simons Hauling. Notwithstanding the foregoing, Simons Hauling agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall terminate upon payment of the civil charge required by Section D of this Order. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Simons Hauling from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Simons Hauling voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of May 16, 2005.

Gerald Feeley Jr. (for)
Robert G. Burnley, Director
Department of Environmental Quality

Simons Hauling, Co., Inc. voluntarily agrees to the issuance of this Order.

By: R. Wayne Greenwood

Date: March 30, 2005

Commonwealth of Virginia

City/County of Henrico

The foregoing document was signed and acknowledged before me this 30th day of
March, 2005, by R. Wayne Greenwood, on behalf
(name)
of Simons Hauling, Co., Inc.

Samuel B. Foltz
Notary Public

My commission expires: 12-31-08

